



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 28, 1960

Dr. J. W. Edgar
Commissioner of Education
Capitol Station
Austin 11, Texas

Opinion No. WW-868

Re: Legal Status of Texas
Public Junior Colleges
as regards their eligi-
bility for financial
assistance under Title
III of the National De-
fense Education Act of
1958.

Dear Dr. Edgar:

We have received your letter of recent date in which you ask the opinion of this Department as to the legal status of Texas Public Junior Colleges as regards their eligibility for financial assistance under Title III of the National Defense Education Act of 1958.

Your letter requesting this opinion contains the following information:

The National Defense Act of 1958 authorizes financial assistance to the States over a period of four fiscal years in establishing and maintaining a two-part program for strengthening science, mathematics and modern foreign language instruction in public schools. (Sections 441-445, Title 20, USCA)

Section 441, Title 20, USCA, authorizes an appropriation of \$70 million for the fiscal year ending June 30, 1959, and for each of the three succeeding fiscal years for payments to state educational agencies under this Title for the acquisition of equipment suitable for use in providing education in science, mathematics and modern foreign languages in the elementary and secondary schools of the State and for minor remodeling of laboratory or other space used for such equipment. This section

further authorizes \$5 million for like fiscal years for payments to state educational agencies for the expansion and improvement of state supervision and related services in the fields of science, mathematics and modern foreign language instruction in the elementary and secondary schools and for the administration of the state plan.

"Under other provisions of Public Law 85-864, and a Texas State Plan adopted pursuant thereto many of the elementary and 12-grade school districts of this State are currently participating in Title III program, which is administered through the Texas Central Education Agency.

"Recently, interested Public Junior College Districts of Texas have observed that such districts may likewise realize Title III program benefits needed if this Agency would obtain a ruling from the Office of Attorney General that Texas Public Junior Colleges constitute a part of the State public secondary school system for purposes of that law."

Section 403 (h), Title 20, USCA, known as the National Defense Education Act of 1958, contains the following definitions of the terms or clauses used in the law:

"The term 'secondary school' means a school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12. For purposes of Sections 441 through 444 of the title, the term 'secondary school' may include a public junior college, as determined under State law."

Regulations adopted as applicable to the administration of Title III, Sections 301-304, issued by the U. S. Commissioner of Education define in Subpart A.1 as follows:

"(p) 'Secondary school' means a school which provides secondary education, as determined under State law, at grade 12 or below, and may include a public junior college providing education beyond the 12th grade if determined under State law to be a part of the State public secondary school system."

Webster's International Dictionary, second edition, defines "secondary," from an educational standpoint, as being "intermediate between elementary and collegiate." Webster's International Dictionary defines "Junior College" as "a college providing courses of Freshman and often of Sophomore grade, either as an independent unit, or as a part of a standard college, or as a secondary school."

Section 12, Article 2815h, Vernon's Civil Statutes, states that a junior college consists of the Freshman and Sophomore College work taught either separately or in conjunction with the Junior and Senior years of the High School and the course of study must be submitted and approved by the Central Education Agency before it may be offered.

The Texas statutes have not specifically defined the meaning of the term Junior College nor has its legal status been determined, but neither has the meaning of the term been limited in any way. (Nixon-Clay Commercial College v. Wood, 170 S.W. 2d 1019, 1944). Therefore, in answering the question before us, it becomes necessary to look to the characteristics of Public Junior Colleges in Texas and the similarities between public junior colleges in relation to public secondary schools in Texas, such as public high schools, to determine the legal status of public junior colleges under State law.

Sections 1, 2 and 3, of Article 2654-1, Vernon's Civil Statutes, read in part as follows:

"Section 1. There is hereby established a Central Education Agency composed of the State Board of Education, the State Board for Vocational Education, the State Commissioner of Education, and the State Department of Education. It shall carry out such educational functions as may be assigned to it by the Legislature,

but all educational functions not specifically delegated to the Central Education Agency shall be performed by County Boards of Education or District Boards of Trustees.

"Sec. 2. The Central Education Agency shall exercise, under the Acts of the Legislature, general control of the system of public education at the State level. Any activity with persons under twenty-one (21) years of age which is carried on within the State by other State or Federal Agencies, except higher education in approved colleges, shall in its educational aspects be subject to the rules and regulations of the Central Education Agency.

"Sec. 3. The Central Education Agency shall be the sole agency of the State of Texas empowered to enter into agreements respecting educational undertakings, including the providing of school lunches and the construction of school buildings, with an agency of the Federal Government, except such agreements as may be entered into by the Governing Board of a State university or college. No County Board of Education or Board of Trustees of a school district shall enter into contracts with, or accept moneys from, an agency of the Federal Government except under rules and regulations prescribed by the Central Education Agency."

Sections 1, 2 and 3, of Article 2654-3, Vernon's Civil Statutes, read in part as follows:

"Section 1. The State Board of Education is hereby declared to be the policy forming and planning body for the Public School System of the State. . . .

"Sec. 2. It shall have the duties and powers prescribed in the statute for the State Board of Education and the State Board of Vocational Education. As one part of the Central Education Agency, it shall have the specific responsibility for adopting policies, enacting regulations and establishing general

rules for carrying out the duties placed upon it or upon the Central Education Agency by the Legislature. . . .

"Sec. 3. The State Board of Education shall review periodically the educational needs of the State and adopt or promote plans for meeting these needs. It shall evaluate the outcomes being achieved in the educational program. . . ."

Sections 1 and 3 of Article 2654-6, Vernon's Civil Statutes, read in part as follows:

"Section 1. There is hereby established the State Department of Education, which shall be the professional, technical, and clerical staff of the Central Education Agency. It shall be organized into such divisions and subdivisions as shall be established by the State Board of Education upon recommendation of the State Commissioner of Education."

"Sec. 3. The functions of the State Department of Education shall be to carry out the mandates, prohibitions, and regulations for which it is made responsible by statute, the State Board of Education, and the Commissioner of Education. It shall have no power over local school districts except those specifically granted in statute, but it shall seek to assist local school districts in developing effective and improved programs of education through research and experimentation, consultation, conferences, and evaluation. In discharging these functions the State Department of Education shall make free and full use of advisory committees and commissions composed of professional educators and/or other citizens of the State."

Sections 1, 3, 4 and 7, of Article 2815h, Vernon's Civil Statutes, read in part as follows:

"Section 1. Any Independent School District, or city, which has assumed control of its schools, having in either case an assessed property valuation of not less than Twelve

Million (\$12,000,000.00) Dollars . . .
that will meet the needs of the proposed Junior College District, said need to be determined by the State Board of Education . . . may by vote of the qualified voters of the district or city establish and maintain a junior college . . . "

"Sec. 3. It shall be the duty of the State Board of Education, with the advice of the State Superintendent of Public Instruction¹ to determine whether or not the conditions set forth in Section No. 1 have been complied with, and also whether, in consideration of the geographic location with respect to colleges already established, it is feasible and desirable to establish such Junior College District. In passing upon this question, it shall be the duty of the State Board of Education to consider the needs of the State and the welfare of the State as a whole, as well as the welfare of the community involved. The action of the State Board of Education shall be final and shall be communicated, through the State Superintendent of Public Instruction, to the Board together with an order of the State Board of Education, authorizing further procedure in the establishment of the Junior College District, if said State Board indorses its establishment. . . . "

"Sec. 4. A junior college established and maintained by an independent school district or city that has assumed control of its schools, or where the same has been organized as a junior college district under the provisions of this Act prior to October 15, 1935, as an independent entity, or may hereafter be so created, and/or wherein the

¹Office abolished and powers and duties transferred to State Commissioner of Education. See Arts. 2654-5, 2654-7, Vernon's Civil Statutes.

boundaries of the junior college district are the same, or substantially the same, as the independent school district, shall be governed, administered, and controlled by and under the direction of the board of education of such district or city. The said board of education of such junior college district, under the provisions of this Act, shall in addition to all of the powers and duties vested in them by the terms of this Act, be furthermore vested with all the rights, powers, privileges, and duties conferred and imposed upon trustees of independent school districts by the General Laws of this State, so far as the same may be applicable thereto and not inconsistent with this Act. . . ."

"Sec. 7. The Junior College District created under this Act shall have the power to issue bonds for the construction and equipment of school buildings and the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection. The Junior College District shall also levy and collect taxes for the support and maintenance of the Junior College, provided that no bonds shall be issued and no taxes shall be collected until by vote of the majority of the qualified voters of the Junior College District, at an election called for that purpose in accordance with the provisions of the General Law providing for similar elections in Independent School Districts, such bonds and taxes are authorized. . . ."

Sections 1, 2 and 3 (a) (b) (c) and (d), Article 2815k-2, Vernon's Civil Statutes, read in part as follows:

"Section 1. The Central Education Agency shall exercise, under the Acts of the Legislature, general control of the Public Junior Colleges of this State. All authority not vested by this Act or other laws of the State in the Central Education

Agency or its component parts, is reserved and retained locally in each respective Public Junior College District or governing board of each Public Junior College as provided in the laws applicable thereto.

"Sec. 2. The State Board of Education shall have the responsibility for adopting policies, enacting regulations and establishing general rules necessary for carrying out the duties with respect to Public Junior Colleges placed upon it or upon the Central Education Agency by the Legislature. The State Commissioner of Education shall be responsible for carrying out such policies and enforcing such rules and regulations.

"Sec. 3. The State Board of Education, with the advice and assistance of the State Commissioner of Education, shall have authority to:

"(a) Authorize the creation of Public Junior College Districts as provided in the laws pertaining thereto. In the exercise of this authority the State Board of Education shall give particular attention to the need for a Public Junior College in the proposed district, and the ability of the district to provide adequate local financial support;

"(b) Dissolve any Public Junior College District which has failed to establish and maintain a Junior College therein within three (3) years from the date of its authorization;

"(c) Maintain a Public Junior College Division within the State Department of Education. The State Commissioner of Education shall have the authority to appoint, subject to the confirmation of the State Board of Education, an Assistant Commissioner of Education for Public Junior Colleges, and to prescribe his duties and functions;

"(d) Adopt standards for the operation of Public Junior Colleges and prescribe the rules and regulations therefor; . . ."

As set out in Article 2815h, Vernon's Civil Statutes, the Texas Public Junior Colleges are governed, administered and controlled by the Board of Education of the Independent School Districts or Junior College Districts of the particular district in which each is located and all such districts are under the general control of the Central Education Agency as stated in Article 2654-1, Vernon's Civil Statutes. Under Article 2815h, Vernon's Civil Statutes, the Junior College Districts are given power to issue bonds, levy taxes to service same, and levy and collect taxes for their support and maintenance. Therefore, Junior Colleges of Texas are an integral part of the local public school system, and, as such, are a part of the secondary public school program which includes high schools and junior colleges. Although from a curriculum standpoint, the Texas Public Junior Colleges are considered higher education, since they offer work parallel to that of the first two years of the four year colleges, they also come within the definition of secondary schools in Texas, being governed and financed in the same manner on the State and local levels as are other secondary schools in Texas and we conclude that this is controlling in determining their legal status as secondary schools.

Therefore, it is the opinion of this Department that the Texas Public Junior Colleges are an integral part of the local public school system, and, as such, under State law, are a part of the public secondary school system of Texas which entitles them to financial assistance under Title III of the National Defense Education Act of 1958.

SUMMARY

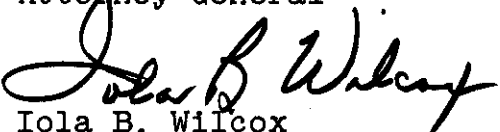
The Public Junior Colleges of Texas, an integral part of local public school systems, are considered a part of the secondary school program of Texas under State law even though the curriculum is parallel to that of the first two

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years of a four year college,
and therefore, the Public
Junior Colleges of Texas are
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ance under Title III of the
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of 1958.

Yours very truly,

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Iola B. Wilcox
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APPROVED:

OPINION COMMITTEE
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